Supreme Court, U.S.
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No. 93-1603

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

CITY OF CLEARWATER, FLORIDA, *et al.*,
Petitioners,
v.
CHURCH OF SCIENTOLOGY FLAG SERVICE ORG., INC.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

REPLY BRIEF OF PETITIONERS

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1. In its opposition, Scientology claims it was a prevailing party because it caused changes in the ordinance. But as explained in Clearwater's petition, the changes Scientology caused either did not aid it or were adverse to it. This, indeed, was the finding of the District Court, which was intimately familiar with the case.

2. In its opposition, Scientology says that the very wealthiest companies should receive attorneys fees under Section 1988, and that even litigation misconduct does not warrant denial of fees. We believe Congress would be very surprised to learn that its intent in enacting Section 1988 was to award fees to the wealthy, thereby "raising" them to the economic level of the poor for whom the statute was enacted, and that it intended to reward misconduct by nonetheless allowing fees.

3. In its opposition Scientology says that denial of fees to the wealthy will create a "mare's nest of [col-

lateral] litigation." Opp. p. 23. But there will be no mare's nest when it comes to organizations such as Scientology and the corporate plaintiffs discussed in the petition, since they so clearly are wealthy organizations which regularly finance and can afford litigation.[1] Nor will there be a mare's nest with regard to the less affluent for whom Section 1988 was enacted, since they so clearly *cannot* afford expensive civil rights litigation.

In cases where it may in fact be necessary to determine ability to finance expensive litigation, the question will be no different than exists under other statutes, including ones cited by Scientology.

Respectfully submitted,

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[1] Indeed, the amount of collateral litigation will be reduced regarding them, because it will not be necessary to engage in the extensive litigation which currently exists over the *amount* of fee